

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YESH MUSIC, LLC., BRYAN EICH, and
RICHARD CUPOLO,

Plaintiffs,

v.

MYSPACE LLC a/k/a LEGACY VISION LLC,

Defendant.
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Case No.: 19-cv-2673

ECF CASE

**COMPLAINT AND JURY DEMAND
FOR DAMAGES FOR COPYRIGHT
INFRINGEMENT**

Plaintiffs Yesh Music, LLC (“YESH”), Bryan Eich (“EICH”), and Richard Cupolo (“CUPOLO”) by and through the undersigned counsel, bring this Complaint and Jury Demand against defendant MySpace LLC a/k/a Legacy Vision LLC (“MYSPACE”) for damages based on copyright infringement pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101, et seq. (“the Copyright Act” or “Act”). Plaintiffs allege below upon their personal knowledge, and upon information and belief as to other matters so indicated.

NATURE OF THE ACTION

1. Defendant, without authority or license from plaintiffs, unlawfully publicly performed, displayed, and/or distributed plaintiffs’ sixty-three (63) copyrighted recordings (the “Copyrighted Recordings”) in violation of plaintiffs’ exclusive rights under Section 106 of the Act.

2. Defendant’s website is accessible through the URL <www.myspace.com> (the “Website” or “Music Player”). Defendant, for each of plaintiffs’ Copyrighted Recordings, embedded codes linking each recording to music-only videos on third-party YouTube’s servers. Defendant also built substantial functionality on top of each of the embedded links, allowing any user to: (i) pause, (ii) fast-forward, (iii) rewind, (iv) add to mix, (v) add to a queue, (vi) link, (vii)

embed, (viii) go to next video in queue, (ix) go to previous recording in queue, and (x) share each a direct infringement of each of the Copyrighted Recordings.

3. Embedding the links to third-party content, building substantial functionality separate and apart from the third-party content, and/or knowingly linking to infringing third-party content are each separate acts of infringement.

4. Plaintiffs have been injured as a result of defendant's acts of infringement, and are entitled to defendant's profit, plaintiffs' losses, an election of statutory damages, and attorney's fees.

JURISDICTION

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

6. The Court has personal jurisdiction over defendant for at least four reasons: (1) defendant has committed acts of copyright infringement in this District and elsewhere in New York; (2) defendant regularly does business or solicits business in this District and in New York; (3) defendant engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided to individuals in this District and in New York; and, (4) defendant has purposefully established substantial, systematic, and continuous contacts with this District and should reasonably expect to be haled into court here. Thus, the Court's exercise of jurisdiction over defendant will not offend traditional notions of fair play and substantial justice.

7. Defendant's parent company Viant Technology LLC is located in this District.

8. Plaintiffs YESH's, EICH's, and CUPOLO's Copyrighted Recordings were registered for copyright protection with the U.S. Copyright Office prior to the filing of this

matter and satisfy the registration requirement as set forth in 17 U.S.C. § 411(a). See **Exhibits 1, 2, and 3**.

9. YESH was assigned all beneficial rights to its Copyrighted Recordings by the authors and said assignment has been registered with the U.S. Copyright Office. See **Exhibit 4**.

VENUE

10. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 28 U.S.C. § 1400(a).

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2), (c)(2), (c)(3) and 1400(b) because plaintiff resides in this District, defendant is a foreign company that does business in the State of New York, defendant has committed acts of infringement in New York and in this District, a substantial part of the events or omissions giving rise to plaintiff's claims happened in this District, and defendant is subject to personal jurisdiction in the district.

12. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

PARTIES

13. At all times material hereto, plaintiff Yesh Music, LLC was, and is, a limited liability company organized under the laws of the State of New York, with its principal in this District. YESH is engaged in the business of music publishing and otherwise commercially exploiting its copyrighted sound recordings of the band The American Dollar.

14. At all times material hereto, plaintiff Bryan Eich was, and is, an individual and resident of this District. EICH has two (2) U.S. Copyright Registrations which defendant has infringed. See **Exhibit 2**.

15. At all times material hereto, plaintiff Richard Cupolo was, and is, an individual and resident of this District. CUPOLO has ten (10) U.S. Copyright Registrations which defendant has infringed. See **Exhibit 3**.

16. Upon information and belief, MySpace LLC a/k/a Legacy Vision LLC is a limited liability company, having its principal place of business located at 6100 Center Drive, Suite 800, Los Angeles, CA 90045.

FACTS

17. Plaintiff YESH is comprised of two professional musicians from Queens. The two managing members of plaintiff are Richard Cupolo and John Emanuele, who are also the only two members of the band “The American Dollar”. Messrs. Cupolo and Emanuele formed “The American Dollar” shortly after graduating college. Within three years, both Cupolo and Emanuele were successful enough to earn a living solely from the revenue generated from their recordings.

18. Soon after making the transition to full-time musicians, it became apparent that licensing was going to be the key to the band’s revenue generation. Yesh Music, LLC was formed to handle all of the licensing requests. Cupolo and Emanuele formed YESH and then assigned all of their rights to all recordings made under the “The American Dollar” name to the company.

19. Plaintiff EICH is an individual musician and owner of two (2) U.S. Copyright Registrations covering two albums of recordings Sleeping by a Wire, and Devil in Disguise, both of which have been infringed by defendant. See **Exhibit 2**.

20. Plaintiff CUPOLO is an individual musician and released works under his solo project called City Society. CUPOLO is the owner of ten (10) U.S. Copyright Registrations, all of which have been infringed by defendant. See **Exhibit 3**.

21. As independent professional musicians, plaintiffs rely on each stream of revenue for their livelihood. By depriving plaintiffs of a single stream of revenue, defendant has put plaintiffs' livelihood in jeopardy.

22. Upon information and belief, defendant MYSPACE operates as a social networking website focusing on music and is located at <www.myspace.com>. Defendant allows its members to set up personal profiles that can be linked together through networks of friends.

23. Upon information and belief, in or around 2014 defendant was owned by Time, Inc. Time changed the name of "MySpace Inc." to "Legacy Vision LLC". Time, Inc. then, transferred all of MySpace's assets to Viant, and registered a brand new company called -- MySpace LLC.

24. Defendant's business generates significant revenue through the service of directed advertisements to every user, and the collection and sale of data on its millions of users. The data collected consists of each user's posts, music preferences, and other activities on and off the website. Defendant sells that data at a premium.

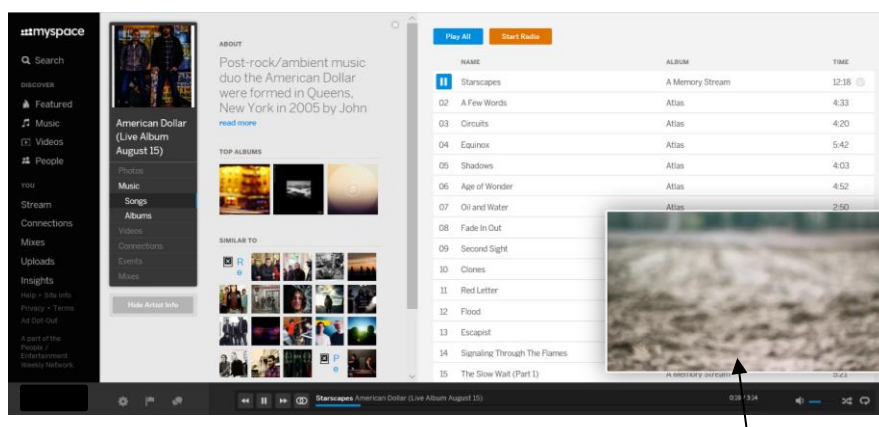
DEFENDANT'S WEBSITE

25. Defendant's website allows a user to enter the name of a song, album, or artist, in the query box at the top of the page. In response, that song, album, or artist's complete work is listed in a music player (the "Music Player").

26. Once the user clicks on the play button next to a recording, an I-Frame is opened on the lower part of the web page which is populated by generally a music-only video. The mostly unlicensed video content is seamlessly served from third-party YouTube's servers.

27. An "I Frame" (short for inline frame) is an HTML element that allows an external webpage to be embedded in an HTML document. Unlike traditional frames, which were used to create the structure of a webpage, I Frames can be inserted anywhere within a webpage layout.

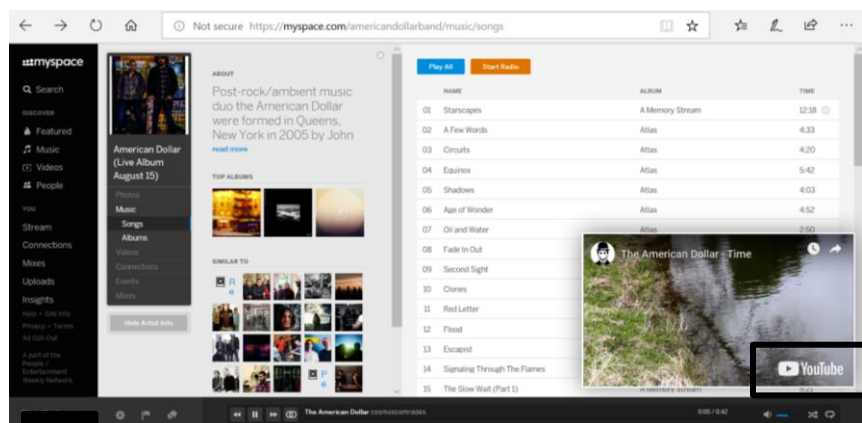
28. The user has no way of knowing the content for each recording is being provided by YouTube. As the below screenshot for the recording "Time" demonstrates:



YouTube video

29. The only way a user would be able to determine the content is generated by YouTube is if the user scrolls over video, at which point a small YouTube appears in the corner

as the below screen-shot demonstrates.



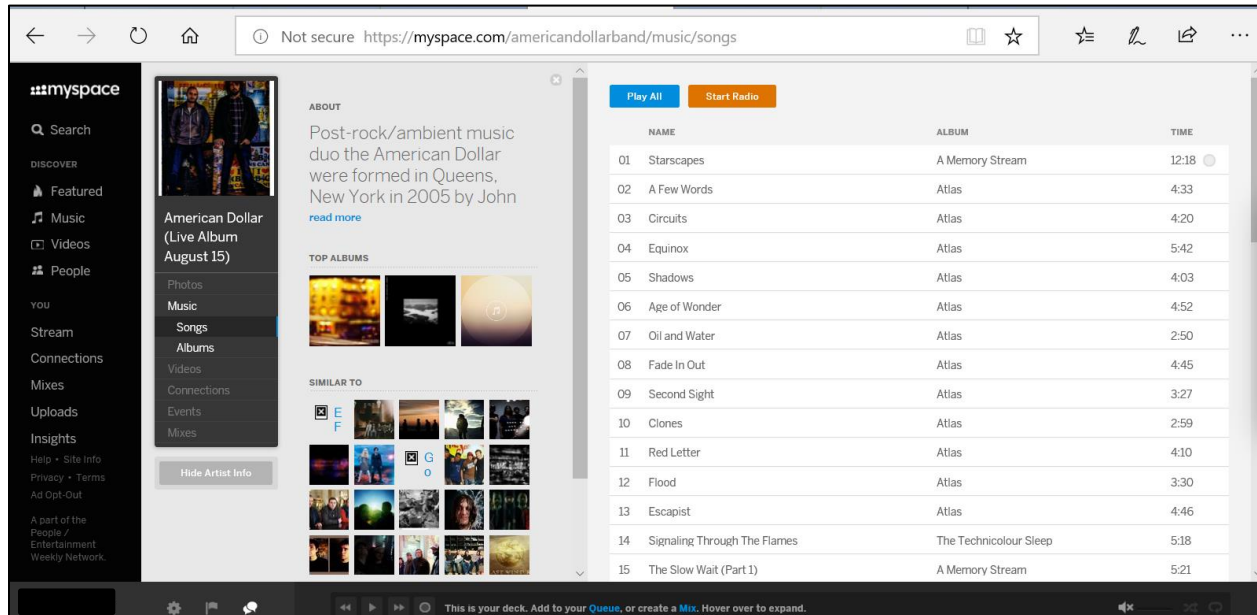
30. At all times material to this Complaint, defendant embedded in the code to its Website a link to third-party YouTube's servers for each of plaintiffs' Copyrighted Recording. Defendant also created "functionality" separate and apart from YouTube. That functionality allows any user to: (i) pause, (ii) fast-forward, (iii) rewind, (iv) add to mix, (v) add to a queue, (vi) link, (vii) embed, (viii) go to next video in queue, (ix) go to previous recording in queue, and (x) share the recording. This is a direct infringement of each of the Copyrighted Recordings.

31. Defendant overlaps its own functionality on top of the third-party content.

32. The functionality is from code served from the defendant's servers and interacts seamlessly with the music-only video.

33. If the user selects another recording, the first disappears and the second starts to play seamlessly.

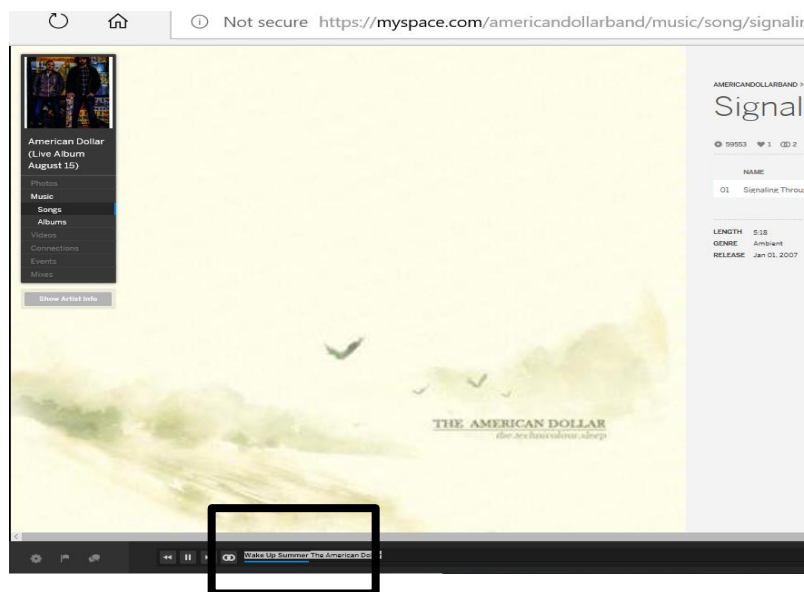
34. Below is a screen shot, taken on May 6, 2019 of defendant's Music Player



Play, Pause, Previous/Next Track buttons

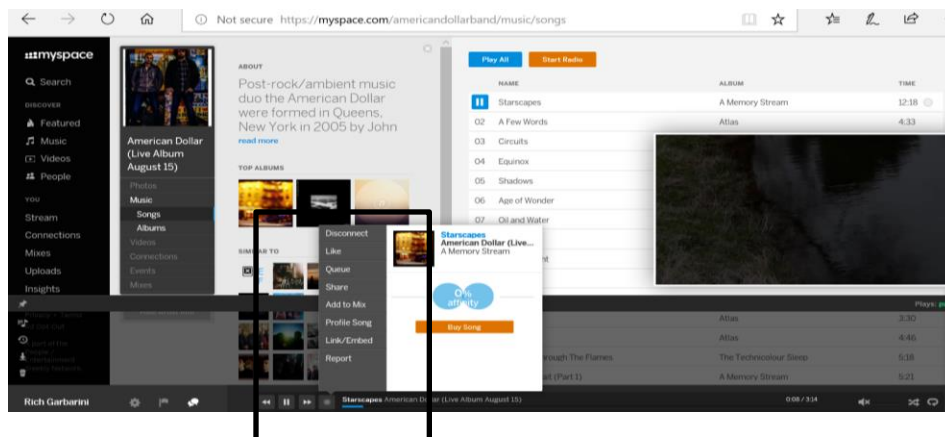
35. As the above demonstrates, the Play/Pause, Previous Track, Next Track buttons are separate and apart from the content served by YouTube.

36. At all times relevant to this Complaint, defendant incorporated a fast forward and rewind feature as shown below.



37. The user can move the blue bar at the bottom to any point in the song. This feature is separate and apart from the third-party provided content, it comes from code on defendant's servers.

38. The "Link, Queue, Share, add to Mix, Profile Song, Link/Embed" button is also separate and apart from the video content from the third-party. Below is a screenshot taken on May 6, 2019 of the Copyrighted Recording "Starscapes".



39. The "Like" button allows users to like each recording on the MYSPACE website not YouTube.

40. The "Queue" button allows users to place each recording into a queue on the MYSPACE website not YouTube.

41. The "Share" button allows users to share the MYSPACE website's URL for the recording not YouTube.

42. The "Add to Mix" button allows users to place each recording into a mix of various selected recordings on the MYSPACE website not YouTube.

43. The "Link/Embed" button allows users to Link or embed the recording as provided by MYSPACE. In other words, the Link button links to MYSPACE (same with the embed button).

44. For example, the link code for YESH's recording "Starscapes" by The American Dollar is <https://mysp.ac/4NoiS?play=1>. This URL, if written or pasted into a browser, goes directly to Starscapes on MYSPACE.

45. The embed code offered by defendant to embed "Starscapes" on the users website is: <iframe width="300" height="90" src="//[media.myspace.com/play/song/starscapes-64221795-70276037](#)" frameborder="0" allowtransparency="true" webkitallowfullscreen mozallowfullscreen allowfullscreen></iframe><p>Starscapes from American Dollar (Live Album August 15) on Myspace.</p>.

46. Once again, defendant allows any user to embed a link to the recording on the MYSPACE website with that code.

47. When a user on the MYSPACE website double clicks on the video of the recording, the page expands – on the MYSPACE website.

48. For example, below is a screenshot of the video for the recording Mosaics. The below is a full-screen on MYSPACE.



49. The only way the user can get to YouTube is if he/she clicks on the almost imperceptible YouTube at the bottom, which appears only if the user moves his mouse over the video.



50. As is apparent from the screen-shot, the YouTube button is barely noticeable.

51. Defendant actively took steps to display the Copyrighted Recordings even though the videos containing the Copyrighted Recordings are stored on a third-party's servers (namely YouTube). This violates plaintiffs' rights under Section 106 of the Act and plaintiffs has been injured in an amount to be determined at trial.

52. Defendant displayed the Copyrighted Recordings by embedding links to the videos synchronizing each Copyrighted Recording onto its website. Defendant displayed, and/or distributed each Copyrighted Recording by building functionality on top of the third-party content. This violates plaintiff's rights under Section 106 of the Act and plaintiff has been injured in an amount to be determined at trial.

DEFENDANT EMBEDDED EACH LINK TO EACH COPYRIGHTED RECORDING

53. “Embedding” a link to a video requires a coder intentionally add a specific “embed” code to the HTML instructions that incorporate the link on the webpage. While the embed code exists solely on defendant’s computer, the video is hosted on a third-party server.

54. For YESH’s recording “Starscapes” the embed code provided by YouTube for embedding the video on defendant’s website is “<iframe width=“448” height=“252” src=“https://www.youtube.com/embed/rr5WXueaqpl” frameborder=“0” allow=“accelerometer; autoplay; encrypted-media; gyroscope; picture-in-picture” allowfullscreen></iframe>.”

55. Each of the Copyrighted Recordings has a similar embed code.

56. Substantially all of the music videos embedded on defendant’s website link to infringing content – a fact which defendant is well-aware.

57. Unlike major labels, like SONY, Warner, Universal, or BMG; independent artists, like plaintiffs, have no ability to control the upload of third-party videos containing infringing uses of their copyrighted content.

58. This means, independent artists suffer from scores of infringing uses on YouTube for each official track.

59. It is impossible for independent artists to employ a full-time staff dedicated solely to serving DMCA Take-Down notices on YouTube for the thousands of infringing uses on YouTube. Regardless, the DMCA process does not work because as quickly as infringing uses are taken off YouTube, new infringing uses are uploaded.

60. The major labels, through the YouTube Content ID system available only for them can disable infringing videos without having to serve DMCA notices. The major labels simply click on infringing uses and disable them.

61. Of the sixty-three (63) music videos linked by defendant, only twelve (12) are licensed uses. Defendant deliberately links to videos which are not official licensed video. Rather it links to the video with the most plays, which is, apparently, almost always an infringing video.

62. Defendant, without the assistance of any users, took active steps to put a process in place that resulted in a transmission of the infringing videos so that they could be visibly shown. Most directly this was accomplished by the act of including the code in the overall design of the Music Player; that is, embedding.

63. Defendant knew its blind linking to YouTube videos would link to unlicensed videos. Defendant directly infringed, and its actions clearly satisfy the standard for enhanced damages under Section 504(c) of the Act.

FACTS SPECIFIC TO PLAINTIFF YESH

64. Defendant infringed YESH's rights under Section 106 of the Act to fifty-one (51) U.S. Copyright Registrations. See **Exhibit 1**.

65. The below screenshot demonstrates each of the fifty-one (51) YESH U.S. Copyright Registrations. The number of plays on the MYSPACE website is in the last column.

//myspace.com/americandollarband/music/songs

Play All Start Radio

	NAME	COMPOSER	ALBUM	DATE	TIME	PLAYS
01	Starscapes	American Dollar (Live Album August...	A Memory Stream	2008	12:18	309
02	A Few Words	American Dollar (Live Album August...	Atlas	2009	4:33	328
03	Circuits	American Dollar (Live Album August...	Atlas	2009	4:20	200
04	Equinox	American Dollar (Live Album August...	Atlas	2009	5:42	202
05	Shadows	American Dollar (Live Album August...	Atlas	2009	4:03	245
06	Age of Wonder	American Dollar (Live Album August...	Atlas	2009	4:52	305
07	Oil and Water	American Dollar (Live Album August...	Atlas	2009	2:50	204
08	Fade In Out	American Dollar (Live Album August...	Atlas	2009	4:45	254
09	Second Sight	American Dollar (Live Album August...	Atlas	2009	3:27	159
10	Clones	American Dollar (Live Album August...	Atlas	2009	2:59	425
11	Red Letter	American Dollar (Live Album August...	Atlas	2009	4:10	177
12	Flood	American Dollar (Live Album August...	Atlas	2009	3:30	139
13	Escapist	American Dollar (Live Album August...	Atlas	2009	4:46	136
14	Signaling Through The Flames	American Dollar (Live Album August...	The Technicolour Sleep	2006	5:18	59,553
15	The Slow Wait (Part 1)	American Dollar (Live Album August...	A Memory Stream	2008	5:21	530
16	Frontier Melt	American Dollar (Live Album August...	Atlas	2009	0:48	189
17	Call	American Dollar (Live Album August...	A Memory Stream	2007	5:25	58,184
18	Anything You Synthesize	American Dollar (Live Album August...	A Memory Stream	2007	4:41	59,499
19	Bump	American Dollar (Live Album August...	A Memory Stream	2008	3:17	232
20	The Slow Wait (Part 2)	American Dollar (Live Album August...	A Memory Stream	2008	3:50	319
21	Lights Dim	American Dollar (Live Album August...	A Memory Stream	2008	4:02	206
22	Anything You Synthesize	American Dollar (Live Album August...	A Memory Stream	2008	4:41	475
23	Our Hearts Are Read	American Dollar (Live Album August...	A Memory Stream	2008	3:55	173
24	Intermission	American Dollar (Live Album August...	A Memory Stream	2008	0:33	172

//myspace.com/americandollarband/music/songs

22	Anything You Synthesize	American Dollar (Live Album August...	A Memory Stream	2008	4:41	475
23	Our Hearts Are Read	American Dollar (Live Album August...	A Memory Stream	2008	3:55	173
24	Intermission	American Dollar (Live Album August...	A Memory Stream	2008	0:33	172
25	We're Hitting Everything	American Dollar (Live Album August...	A Memory Stream	2008	3:48	192
26	Transcendence	American Dollar (Live Album August...	A Memory Stream	2008	3:30	192
27	Age of Wonder	American Dollar (Live Album August...	Atlas	2009	4:52	1,020
28	Heavy Eyes Ignite (Single Edit).mp3	American Dollar (Live Album August...	Heavy Eyes Ignite	2012	3:29	1,116
29	Cambian	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:27	3
30	The Technicolour Sleep	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:22	0
31	Separate but Equal	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:58	0
32	Daytrip	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:01	5
33	Thompson	American Dollar (Live Album August...	Music for Focus and Creativity	2013	1:40	5
34	Sands	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:16	4

52	Chase	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:27	2
53	Near East (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:05	2
54	Transcendence (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:23	0
55	Second Sight (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:23	2
56	Anything You Synthesize (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:57	3
57	Equinox (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	5:34	0
58	Signaling Through the Flames (Film Edit)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:22	0
59	Time (Ambient)	American Dollar (Live Album August...	Music for Sleep	2013	5:11	0
60	Oil and Water (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:57	0
61	Time (Film Edit)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:46	0
62	Red Letter (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:19	0
63	The Slow Wait (Part Two) (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:47	4
64	Circuits (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:20	0
65	Rudiments of a Spiritual Life (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:49	0
66	The Slow Wait (Part One) (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:33	4
67	Fade in out (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:59	0
68	Signaling Through the Flames (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	5:01	2
69	Shadows (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:10	0
70	Age of Wonder (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	5:06	0
71	Intro	American Dollar (Live Album August...	Music for Focus and Creativity	2013	2:38	2
72	A Few Words (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	4:55	0
73	We're Hitting Everything (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:11	0
74	Starscapes (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	7:49	3
75	Bump (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:30	0
76	Dea (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:59	0
77	Lights Dim (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	1:29	0
78	Par Avion (Ambient)	American Dollar (Live Album August...	Music for Focus and Creativity	2013	3:44	0
79	Sands	American Dollar (Live Album August...	Music for Sleep	2013	2:16	5
80	Shadows (Ambient)	American Dollar (Live Album August...	Music for Sleep	2013	4:10	0
81	Far Adrift	American Dollar (Live Album August...	Music for Sleep	2013	3:35	0
82	Par Avion (Ambient)	American Dollar (Live Album August...	Music for Sleep	2013	3:44	1
83	We're Hitting Everything (Ambient)	American Dollar (Live Album August...	Music for Sleep	2013	3:11	0
84	Cambian	American Dollar (Live Album August...	Music for Sleep	2013	3:27	5
85	Bump (Ambient)	American Dollar (Live Album August...	Music for Sleep	2013	3:30	0
86	Chillpoint Break	American Dollar (Live Album August...	Music for Sleep	2013	3:05	0
87	Starscapes (Part One) (Ambient)	American Dollar (Live Album August...	Music for Sleep	2013	2:18	7

66. Each of the above recordings was registered for copyright prior to defendant's infringement.

67. Plaintiff YESH did not give a license or permission to defendant for any use.

68. YESH discover defendant's infringing activity in March 2019.

FACTS SPECIFIC TO BRYAN EICH

69. Defendant infringed EICH's rights under Section 106 of the Act to two (2) U.S. Copyright Registrations.

70. EICH's two (2) registrations are for the albums Sleeping By A Wire and Devil in Disguise. See **Exhibit 2**.

71. As is demonstrated below, recordings from both albums were displayed, puplically performed, and/or distributed.

NAME	COMPOSER	ALBUM	DATE	TIME	PLAYS
01 Honey	Bryan Eich	Sleeping By a Wire	2006	12:12	0
02 Somewhere Along The Line	Bryan Eich	Sleeping By a Wire	2006	3:59	2
03 Lonely Where I've Been	Bryan Eich	Sleeping By a Wire	2006	4:32	0
04 Can't Wait For Long	Bryan Eich	Sleeping By a Wire	2006	4:50	1
05 One That I Like	Bryan Eich	Sleeping By a Wire	2006	3:27	10
06 Lost	Bryan Eich	Sleeping By a Wire	2006	5:06	0
07 Everything	Bryan Eich	Sleeping By a Wire	2006	3:34	0
08 Head Hangs Low	Bryan Eich	Sleeping By a Wire	2006	3:16	1
09 Love Blind	Bryan Eich	Sleeping By a Wire	2006	4:36	12
10 Piece Of Mind	Bryan Eich	Sleeping By a Wire	2006	4:17	2
11 Time Will Come Over You	Bryan Eich	Sleeping By a Wire	2006	3:58	0
12 Big Fish	Bryan Eich	Sleeping By a Wire	2006	3:46	4
13 We're Worlds Apart	Bryan Eich	Sleeping By a Wire	2006	3:40	2
14 Care For You	Bryan Eich	Devil in Disguise	2009	3:43	1
15 Heaven's Just a Feeling (Devil in Disguise)	Bryan Eich	Devil in Disguise	2009	3:32	3
16 I've Been Alive	Bryan Eich	Devil in Disguise	2009	3:52	0
17 Shakin' Up The Love	Bryan Eich	Devil in Disguise	2009	3:22	0
18 Building a Room	Bryan Eich	Devil in Disguise	2009	3:19	0

72. At no time did EICH grant a license or authority for defendant's infringing uses of his recordings.

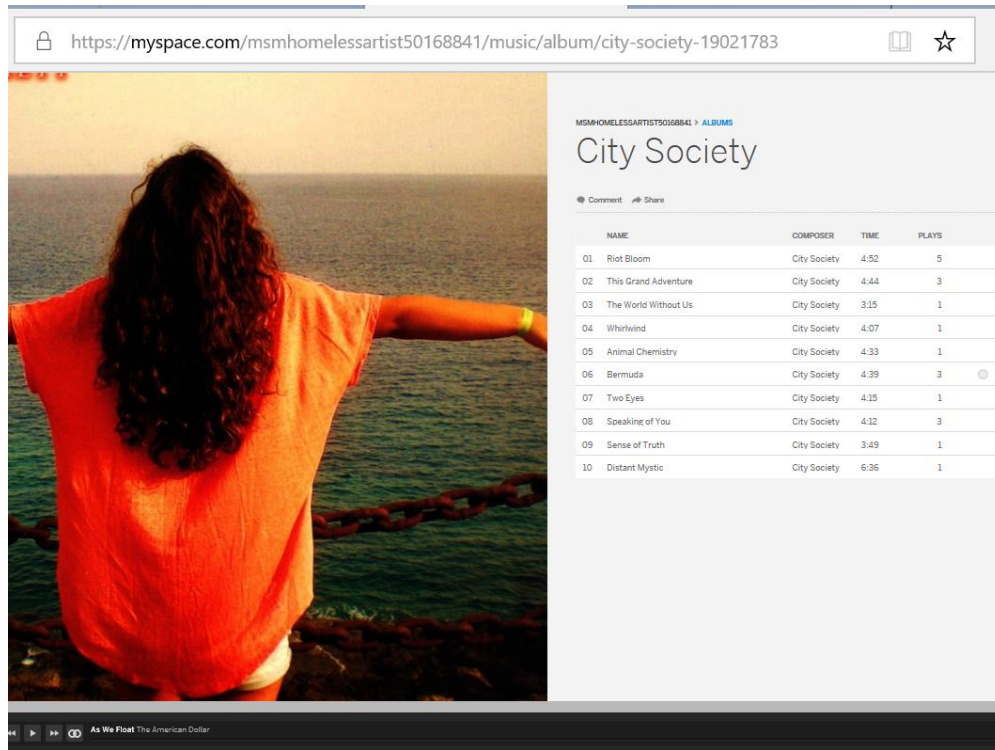
73. Both U.S. Copyright Registrations were registered prior to defendant's infringement.

74. EICH discover defendant's infringing activity in May 2019.

FACTS SPECIFIC TO RICH CUPOLO

75. Defendant infringed CUPOLO's rights under Section 106 of the Act to ten (10) U.S. Copyright Registrations. See **Exhibit 3**.

76. Each of the following ten (10) recordings were registered for protection prior to defendant's infringement.



77. At no time did CUPOLO grant a license or authority to defendant for any use of his recordings.

78. All ten (10) U.S. Copyright Registrations were registered prior to defendant's infringement.

79. CUPOLO discover defendant's infringing activity in March 2019.

FIRST CLAIM FOR RELIEF **COPYRIGHT INFRINGEMENT**

80. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

81. It cannot be disputed that plaintiffs have valid, registered copyrights, and own all rights to the Copyrighted Recordings.

82. By embedding the links to plaintiffs' Copyrighted Recordings in the code for defendant's website, without authority from plaintiffs, defendant publicly performed, publicly displayed, and/or distributed each of plaintiffs' Copyrighted Recordings.

83. By uploading links to infringing content, defendant infringed plaintiff's right to display, publicly transmit, and/or publicly perform.

84. By including functionality on top of the embedded links to plaintiffs' Copyrighted Recordings in the code for defendant's website, without authority from plaintiffs, defendant publicly performed, publicly displayed, and/or distributed each of plaintiffs' Copyrighted Recordings.

85. Defendant's use of the Copyrighted Recordings was not for criticism, comment, news reporting, teaching, scholarship, or research.

86. Defendant's use was not transformative.

87. Defendant has intentionally infringed (pursuant to Section 504(c)) plaintiffs' exclusive rights set forth in Section 106 of the Act, and elsewhere.

88. As a direct and proximate result of defendant's infringement, plaintiffs have incurred damages, and requests an award of defendant's profits, and plaintiffs' loss, plus costs, interest, and attorneys' fees. Plaintiffs may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to \$150,000, but not less than \$30,000.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendants awarding plaintiffs as follows:

1. restitution of defendants' unlawful proceeds;
2. compensatory damages in an amount to be ascertained at trial;


3. statutory damages to plaintiff according to proof, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));
4. reasonable attorneys' fees and costs (17 U.S.C. § 505);
5. pre- and post-judgment interest to the extent allowable; and,
6. such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: May 6, 2019
New York, New York

GARBARINI FITZGERALD P.C.

By: 
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